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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 26, 1993

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VIA FEDERAL EXPRESS OVERNIGHT MAIL

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Communications
1919 M Street NW
Washington, D.C. 20554

FCC MAIL ROOM

Re: In the Matter of MM Docket No. 92-266

IMPLEMENTATION OF THE
CABLE TELEVISION CONSUMER
PROTECTION AND COMPETITION
ACT OF 1992

Rate Regulation

Dear Ms. Searcy:

Enclosed please find an original and 12 copies of the **Comments** of the State of New Jersey, Board of Regulatory Commissioners for filing in the above matter. We have included copies for the Chairman, each Commissioner, Ms. Ellen Schned and Mr. Alan Aronowitz.

Kindly place the Board and the Office of Cable Television on the service list for this docket.

Please return one copy marked "filed" in the enclosed addressed, stamped envelope.

Thank you for your consideration.

Very truly yours,

Dr. Edward H. Salmon
Chairman

EHS/CMF/mgm

Enclosures

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JAN 27 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF

IMPLEMENTATION OF THE CABLE
TELEVISION CONSUMER PROTECTION
AND COMPETITION ACT OF 1992

RATE REGULATION

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COMMENTS OF THE BOARD OF REGULATORY
COMMISSIONERS, STATE OF NEW JERSEY, JAN 27 1993
ON NOTICE OF PROPOSED RULEMAKING

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I. BACKGROUND AND INTRODUCTION

A. The Authority of the Board

The Board of Regulatory Commissioners of the State of New Jersey (hereinafter the "Board"), consisting of Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor, Commissioner, and Carmen J. Armenti, Commissioner, submit the following comments to the Commission in the above captioned matter. The Board has existing broad regulatory authority over cable television operations in the State of New Jersey pursuant to the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., and is the franchising authority for New Jersey cable television systems pursuant to federal law. See 47 U.S.C.A. Section 522(9) and Section 541. A division of the Board is its Office of Cable Television which has extensive experience over a period of 20 years in the review of system specification, design, construction, investigation and resolution of disputes between cable operators and their subscribers, including complaints concerning programming packing and marketing, and, prior to 1987, regulated rates for basic service. Additionally, the Board has jurisdiction over public utilities and has extensive experience in economic regulation including traditional rate base/rate of return and non-traditional methodologies. We believe our experience can be helpful to the Commission and other franchising authorities.

B. The New Jersey Common Tariff Approach

One of the methods previously used by the Board to regulate the rates for cable operators is a "Common Tariff" approach to regulation for basic subscriber service.

N.J.A.C. 14:17-18.1 et seq.

The Common Tariff was an alternative to traditional rate base/rate of return rate making procedures. This alternative was available to each cable television company in the State, subject to certain conditions. If the Common Tariff approach was elected, the company's basic service level was classified according to (1) the total number of channels offered in its basic service package, (2) the number of additional channels in basic service beyond those then required by the Commission, and (3) access and local origination requirements in the franchise, but excluded alphanumeric, unused and leased channels.

These maximum rates were based on a schedule in effect for the calendar years 1985 and 1986. The tariff remained effective in 1987 as an option for those systems, pursuant to the Commission's rules, there was not effective competition for cable television service. Further, the Common Tariff was optional and cable operators could elect to be governed by the rate base/rate of return method. Prior to the development of the Common Tariff, the Board regulated New Jersey cable operators using traditional cost of service approach.

C. General Policy

In New Jersey, there are 48 cable television systems ranging in size from 1,100 subscribers to 228,000 subscribers. As noted, the Board has authority according to State statute and regulation over all of these systems. Further, over 98 percent of New Jersey residents have cable television service available to them and over 70 percent of the residents subscribe to cable service. The Board believes that all of these systems, except for a very small number of municipalities with the coexistent cable operators, are franchised monopolies, which are not subject to effective competition under the statutory definition of "effective competition" under the Cable Television Consumer Protection and Competition Act of 1992 (hereinafter "Cable Act of 1992"). Communications Act of 1934, Section 623(1)(1). Furthermore, the Board believes the ultimate goal of real competition for video programming services is the ideal.

The reality of the cable television industry in 1993, however, is much less than ideal. That is the reason for the passage of the Cable Act of 1992. The Board believes that the Commission should be pro-active and aggressive in its efforts to stimulate competition, and in the situation where competition does not exist, be equally pro-active and aggressive in seeking to simulate a competitive result.

II. GENERAL PROPOSALS

First, the Board wishes to emphasize that it is

important for the Commission to structure its rules to prevent cable operators from evading the rules, as specifically recognized by Congress. Section 623(h). At paragraph 4 of the NPRM, the Commission seeks comment on whether Congress envisioned the proposed rules to result in generally lower rates. The Board believes that it is appropriate for the rules to produce rates lower than those in effect when the Cable Act of 1992 was passed for all cable systems not subject to effective competition. This should apply to basic tier rates, cable programming services, all equipment charges and all installation charges. Rate rollbacks and refunds should be required for all such services and charges exceeding levels set by the Commission effective December 5, 1992, the effective date of the Cable Act of 1992. Further, any regulatory mechanisms adopted by the Commission under the Cable Act of 1992 should account for industry anticipatory price changes and all retiering activities.

Franchising authorities must be given maximum flexibility to address local concerns and conditions consistent with the Cable Act of 1992. The provisions of the Cable Act of 1992 and the final regulations should not be viewed as a pre-emption of state authority in such traditional areas of state concern as safety, consumer protection and financial reporting. It is important to note that the maintenance and enforcement of all provisions of franchise agreements be unaffected by these rules as is required by the Cable Act of 1992.

In regards to paragraph 5 of the NPRM concerning restructuring of service offerings, the Board believes that it is in the interest of cable customers that the largest amount of channel offerings be included in the basic tier of service. It has long been the policy of the Commission to ensure the widest possible access to all forms of information. We believe the access to information assumes more importance as society becomes more complex. Demands for an increasingly informed and educated public and work force are increasing as the United States seek to effectively be more competitive. Any regulation should give an expansive view to the definition of public and educational access channels. Broad interpretation of the scope of these channels would encourage commercial and non-traditional news, weather, education and other information channels to be included within the basic tier. We further note that these are not high cost programming when considered on a per subscriber basis. In fact, the widest possible distribution of services such as CNN or the Weather Channel lowers the per subscriber cost and may in fact be necessary for the viable continued operation of these information services which assume greater importance in time of an emergency. The Board strongly recommends the Commission adopt final rules which result in the largest number of channels within the basic tier for any given cable company.

As discussed by the Commission at paragraph 12 of the NPRM, the Board strongly believes that the Cable Act of 1992 precludes a cable operator from requiring the purchase of any other service or tier as a precondition for ordering any service or programming.

III. REGULATION OF BASIC SERVICE RATES

A. Benchmark and Price Cap Mechanisms

The Board believes that the most appropriate regulatory alternative for the setting of basic service rates is by the use of a benchmark with a price cap formula. The benchmark we propose would be based on a cost of service model as discussed in paragraph 48 of the NPRM. The model is based on actual cost of service inputs using generally accepted principles such as original cost, straight line depreciation, reasonable profit, etc. This cost of service model would form the basis of Commission determination of basic service rates at the start of regulation. Once the benchmark rate has been set, future price increases will be capped each year by a known cost escalation index based upon actual experience from the prior year.

Additionally, the Board agrees with the concept of permitting the traditional cost of service methodology for a specific company rate proceeding a "safety valve" in those situations where a cable operator believes it may be financially penalized by the proposed regulations. In such cases, the cable operator should bear the burden of proof for its filing. If an operator chooses a specific rate proceeding for itself, however, it should not be permitted to use the benchmark as a "floor rate" for its proceeding. Once a company chooses an individual rate proceeding it should be required to accept the result of that proceeding, assuming of course, that the rate is not confiscatory.

B. The Cost of Service Benchmark

1. The Model

As stated, the Board believes that the Cost of Service Benchmark is the appropriate methodology for the Commission to adopt as the standard for rate regulation under the Cable Act of 1992. Under this approach we propose the Commission use the engineering, operating, programming and other cost data gathered under this rulemaking procedure to develop the cost of an "ideal" or "typical" cable system. The costs should be determined on a per subscriber basis. The Board believes that a benchmark related to cost can be developed without requiring a detailed examination of the actual costs of all the individual cable systems. We believe the information requested by the Commission in Appendix C of the NPRM, Annual Report of Cable Television Systems, would be useful to obtain the necessary information for the construction of the "ideal" or "typical" system for a single national Cost of Service Benchmark.

The data base needed to construct a national model system to be used as the benchmark would be obtainable through the compilation of the Annual Report information to be submitted to the Commission and should include only the 850 systems referenced by the Commission. The Board believes that the data base should be the broadest and most representative sampling as possible.

In order to adjust the data base so that the benchmark is more representative of an "ideal" or "typical" cable

system, the Board believes that approximately the top decile be eliminated in creating the model cable system to be used as a benchmark. The Board is of the opinion that removal of approximately the top ten percent (10%) of the highest cost systems from the data base will more accurately result in a benchmark rate which will adjust for the period of deregulation in the cable industry. If the top ten percent of the highest cost systems are not removed from the data base the benchmark would be set at a higher rate than it should be. Therefore, the Board is of the opinion that the removal of these high cost systems will more appropriately reflect a benchmark which accounts for the period of time when rates were not regulated.

In the Board's view, once the benchmark is set, it should serve as a ceiling. All rates above that benchmark figure should be presumed unreasonable and rolled back with refunds to the benchmark rate. The Board strongly believes that the result intended by Congress with the passage of the Cable Act of 1992 is that the benchmark apply to all rates changed after December 5, 1992.

We note, however, in the following suggested formula certain data must be input that was not requested in the information request sent to 850 cable systems by the Commission. If the Commission uses the proposed model, a further request for information of those 850 cable systems may be required. In the alternative, the Commission may wish to make valid statistical adjustments to the data base in order to include those items for which information had not been requested.

In creating the model and determining the benchmark, the "typical" or "ideal" system should be allowed the recovery of its costs and an opportunity to earn a reasonable return on its invested capital.

In order to assist the Commission in developing the benchmark we propose the following specific model.

The first step in deriving the benchmark is a determination of the model cable operator's costs, the second step is the determination of the level of investment on which the stockholders/owners are entitled to earn a return, and the third step is the determination of a reasonable rate of return for the owners to earn on their investment. These determinations result in the identification of the model cable operator's revenue requirement, which can be expressed in terms of the following equation:

$$RR = E + D + T + r(RB)$$

Where:

RR = Revenue Requirement

E = Operation and Maintenance Expenses

D = Depreciation Expense

T = Taxes

r = Rate of Return

RB = Rate Base, where

$$RB = v - d$$

v = Value at Original Cost

d = Accumulated Depreciation

The Revenue Requirement is equal to the cost-of-service

which includes an appropriate return on investment. A monthly subscriber rate equals the revenue requirement divided by the actual number of subscribers at the end of the year for each cable operator, divided by 12.

The above mentioned formula to determine the rate base of the model cable operator, however, does not include certain items which are valid adjustments to the Rate Base in the determination of rates. The Board believes that in order to create a valid system the following adjustments should be made:

1. Items to be added to Rate Base:

- a) Construction Work in Progress
- b) Working Capital

2. Items to be deducted from Rate Base:

- a) Customer Deposits
- b) Investment Tax Credit
- c) Deferred Taxes
- d) Contributions in Aid of Construction

2. Rate Base

In the regulation of traditional utilities and cable television companies the Board has applied the "used and useful" approach in the determination of rate base. Thus the Board agrees with the Commission's proposal of applying the

"used and useful" standard to the original construction cost of the assets dedicated to service. See Appendix B of the NPRM. The Board is also of the opinion that property held for future use should not be included in the Rate Base when formulating the model cable system since it is not "used and useful".

3. Goodwill

Goodwill is an intangible asset and should be treated as such in the book of account. It is not cost-based and should not be permitted in Rate Base or in the expense account. Goodwill is not a known and measurable factor and any cable operator selling its business could set its own price. Allowing Goodwill to be included in cost based rates would allow cable operators to recover their own expectations of revenue from subscribers. Therefore, the Board strongly recommends that Goodwill not be allowed in Rate Base or expensed when creating benchmark for the model cable system.

4. Customer Equipment

The Board is of the opinion that the original cost of customer equipment should be included in the Rate Base, and a reasonable return be allowed in creating the model cable system. Furthermore, the Board believes that when the equipment is used and installation complete, customers should be charged the original cost of equipment, plus an allowable rate of return.

5. Cost of Capital

The Board recommends that in creating the model cable system, the cost of capital be determined by calculating an overall rate of return. This is similar to the approach used for other regulated industries. In determining the allowable rate of return for the model system, a weighted average of the cost of debt and the cost of equity should be used. Our initial impression based on New Jersey experience is that the weighted average be in the range of 60% to 70% for the cost of debt and 40% to 30% for the cost of equity. The cost of debt and equity should be based on the current cost as reflected by the current capital market conditions.

6. Depreciation

The straight line depreciation over the expected life of the plant investment is the appropriate method to be utilized in creating the "ideal cable system". Generally, depending on type of equipment, the Board recommends that the useful life be either an industry standard or that chosen by the company for federal tax purposes, whichever is less.

The Board believes that the information received from the 850 cable systems will include existing book reserves for depreciation and that these accumulated depreciation reserves were likely determined using other than straight line depreciation. The Board is of the opinion that the "ideal" cable system should reflect straight line depreciation and both the accumulated depreciation and the depreciation

expense should be adjusted for accelerated methods of depreciation. Therefore, it is suggested that the data base be adjusted accordingly to reflect these accelerated forms of depreciation. It is suggested that if a cable system uses an accelerated form of depreciation, the estimated straight line depreciation expense be calculated by using the Original Cost of the Fixed Assets divided by the Useful Life Years of Fixed Assets. In addition, it is suggested that for these cable systems, the accumulated depreciation be adjusted to reflect the straight line method of depreciation. One way of accomplishing this may be to take the difference between the estimated straight line depreciation expense and the accelerated depreciation expense. This difference should be multiplied by the Useful Life Year of Fixed Assets and then added to the accumulated depreciation being booked by the cable system.

7. Operating Expense

For a cable operator serving a single franchise and having no other operations, the Board believes that would be easy to trace the type of expenses by creating a uniform system of accounts which shows detail accounts of expenses.

For multi-franchise cable operators, the Board suggests that the operator should maintain separate books by system or should be recorded in the books by system. This method eliminates the problem of identifying the origin of expenses.

It is recommended that the cable operators identify in its book of accounts the portion of expenses directly attributable to regulated and unregulated areas of business.

For those expenses which are not directly identifiable and cannot be assigned directly, such as corporate expenses, it is suggested that it should be allocated by dividing the cost by the number of channels.

8. Design of Rates

The Board believes that the Commission's proposed method of identifying the portion of the revenue requirement recoverable in basic service rates by calculating the basic tier costs, less direct channel revenues, plus an allocation or other costs based on relative number of channels in use is the preferred method rather than an overly cumbersome alternative.

9. Record Keeping

Each state should be permitted to determine the appropriateness of adopting a Uniform System of Accounts. In order to determine the appropriate methodology to regulate rates for the cable industry, any such determination should be made on the basis of uniform information. The prospect of a uniform accounting of financial information on a national basis does not appear to be feasible at this time. However, we believe it is important that State jurisdictions be permitted to require a uniform system of accounting. Such a

uniform system of accounts is important no matter which form of regulation is eventually adopted by the Commission. States should be permitted to prescribe a detailed Uniform System of Accounts consistent with the federal rules.

Additionally, the Commission's rules should not pre-empt franchising authorities from collecting information from cable operators in a reasonable form

10. Price Cap

After examination of various indices, the Board recommends that the appropriate index should be that of the Gross National Product-Price Index (GNP-PI). Further, we would reduce the index by a static productivity offset, such as 2%. This Board has recently adopted such an approach in the context of a economic regulation for a local exchange carrier and we believe the Commission should give this type of methodology serious consideration. One advantage of this index and offset approach is that it could result in rate decreases and it should be specifically stated that such decrease is an intended result.

The Board believes that the GNP-PI is an index measures the economic factors which reflect the factor inputs of the cable industry. The index itself is well known and easily obtainable. No additional costs or extensive research is required to update the index each year. The static productivity offset, such as 2%, is meant to reflect the known benefits of technology improvements which have been occurring in the cable industry. The economic benefit of

such improvements and efficiencies are fairly passed to the cable subscriber through this offset mechanism.

11. Implementation

The Board strongly objects to the provisions of paragraph 81 of the NPRM regarding the automatic implementation of the increase in proposed rates. The Board believes only that the 30 day notice for the proposed increases is required. The alternative reading proposed in paragraph 82 to provide for meaningful franchising authority review of increases is the more appropriate reading and gives a realistic opportunity for review by the franchising authority. Additionally, a longer non-automatic period will give all interested parties adequate time for comment as required by the Cable Act of 1992. The balance should clearly be struck in favor of meaningful review.

As discussed in paragraph 83 of the NPRM, the Board believes that certain price changes, caused by factors outside the operator's control such as increases in taxes or programming costs, should not be permitted to be passed through without prior regulatory review. These costs may be the bulk of future rates changes. Strict examination of the cost basis as required in other sections of these comments should be followed. Automatic pass-alongs outside the indexed prices should be prohibited. There is a fundamental reason for the permitted indexed increases.

C. Regulation Where Existing Basic Rate Falls Below Benchmark

With the use of a benchmark as a ceiling, the possibility exists that an existing operator's rates will fall below the benchmark price.

The Commission's mechanism in setting a price cap formula to limit how quickly systems with rates below the benchmark could raise their rates to that benchmark price. The Board believes that the increase in existing rates for those systems falling below the benchmark should be limited to increase by twice the price cap. As stated earlier, our recommendation in this regard is the use of the GNP-PI index less static productivity offset. A negative price cap should not force a cable operator under the benchmark to further reduce rates and in such a situation the price for that year should remain fixed. This mechanism will permit the orderly and phased series of annual increases until the benchmark, as adjusted, is reached.

D. Alternative to the Cost of Service Benchmark

The Commission, beginning with paragraph 41, has suggested other alternatives for establishing the benchmark rate. The Board believes that each of these alternatives has basic flaw which prohibit use as benchmark methodologies. The use of an average of rates of cable systems where effective competition exists, is limited by the extremely small sample of cable systems where effective competition exists. A small sample will produce statistically invalid results.

Another alternative presented by the Commission was creation of a benchmark based on rates charged in 1986 before the Cable Communications Policy Act of 1984 effectively prohibited local rate regulation of most cable systems. The Board believes that such a benchmark methodology is not appropriate in this instance. Conceptually, such an approach is valid, but use on a national scale, in an industry where such major technological change has occurred, presents serious problems. Further, the extent, consistency and record of rate regulation prior to the Cable Communications Policy Act of 1984 may not be readily available. The Board believes that these factors make the use of prior rate regulation impractical.

The Commission has also proposed averaging existing cable rates to set a benchmark rate. The Board has its most serious problems with this methodology. Consideration of only existing prices builds into the benchmark the exact high prices which were the reason for the Cable Act of 1992 and these regulations. In economic terms, the benchmark will be set using non-competitive prices. This will reward inefficient prices setting mechanisms and monopoly positions. The Board believes that such a result is undesirable and inconsistent with the Congressional intent of the Cable Act of 1992. Examination of the bases of these rates is precluded and the average will be skewed upward by the recent rate increases seen in anticipation of the Cable Act of 1992. The Board believes that this methodology is the least desirable alternative presented.

E. Certification of the Franchise Authority

At paragraph 19 of the NPRM, the Commission seeks on the standards for the certification of a franchise authority to regulate the rates for basic cable television service. The Board concurs with the Commission's tentative conclusion that a standardized and simple form should be used to certify conformance with the criteria of Section 623(a)(3). We believe the form proposed by the Commission at Appendix D is reasonable, however, any certification by a franchising authority should be based only on information reasonably accessible to the franchising authority. As discussed in more detail at Section VII. Effective Competition, *infra*, the franchising authority should not be responsible to gather data from entities beyond its jurisdiction, such as non-cable television multi-channel video programming distributors.

We also agree with the Commission's conclusion at paragraph 23 of the NPRM that Congress did not intend a full pleading cycle as part of the initial 30 day certification period. We agree that other interested parties could file a challenge to certification by virtue of a petition for revocation once certification is granted. However, we strongly disagree with the Commission's proposal at paragraph 27 of the NPRM to permit a franchising authority 15 days to file an opposition to a petition for revocation of certification. A 30 day window to file a response is more reasonable and will allow the franchising authority an opportunity to evaluate the factual basis for the petition.

IV. REGULATION OF CABLE PROGRAMMING RATES

The Commission has requested comment on the methodology to be employed by the Commission in determining reasonable rates for cable programming services. In determining the unreasonableness of cable programming service rates the Commission must consider certain statutory factors. Additional relevant factors may also be considered.

The Board believes that a simple formula be used by the Commission to establish when rates for these services are unreasonable. The formula should be an actual cost based methodology. The burden must be on the cable operator to provide all relevant data to the Commission in a timely manner. The formula should provide that the rate for service equals actual cost of acquiring programming and transmission, less any revenues or rebates received, plus a reasonable profit, derived on a simple cost of capital basis. It should be noted that proper adjustment must be made in the case of channel package arrangements from programming distributors, particularly in the case of vertical industry integration and when tiers or channel package arrangements are required for customers to acquire premium services.

The Board believes that any price rollbacks and refunds in this area should be effective December 5, 1992. Such overcharges should be returned within 30 days of Commission determination to the individual customers that were overcharged. It is recommended that these returns to customers be made as a specifically identified credit on that customer's next monthly bill.

As the respective franchising authority for the State of New Jersey, the Board receives both written and verbal complaints from cable subscribers and local municipalities. These complaints include an array of subscriber problems that range from request for cable service to excessive rate increases.

The Board believes the simplified standard for receiving subscriber complaints as discussed at paragraph 100 of the NPRM is the preferred approach. We believe a simplified approach would permit the average subscriber to file complaints and would still provide enough information so that the cable operator would have sufficient notice of the claims. The Board further believes that it is advisable to enlist the expertise of the franchising authority in the complaint process and rely on the franchising authorities expertise. We do not agree, however, with the Commission's proposal to limit the time for the filing of an unreasonable rate complaint to 30 days from notice of the rate change. Under the normal billing practices of cable television operators, billing one month in advance, the Commission's proposal could preclude a rate complaint even before the rate goes into effect. We believe that a 90 day or 120 day window to file complaints is more reasonable. The Board also proposes that franchising authorities be given 45 days in which it may concur with the rate complaint. We believe this will allow the franchise authority sufficient time to review any necessary factual information and would ultimately assist the Commission in its review of the complaint. The cable operator could be given 30 days to respond.

V. JOINT AND COMMON COST ALLOCATION

The Commission seeks comment in regard to the proper allocation of joint and common costs between the basic tier and other levels of service. As discussed by the Commission in paragraph 55 of the NPRM, the Board believes that the proper methodology is a simple percentage of the total number of channels available. For example, the allocation of costs for the basic tier of 12 channels on a 48-channel system is 12/48 or 25% cost allocation of joint and common charges to the basic tier. The Board believes the intent of this cost allocation is to fairly allocate costs and thus preventing subsidization of unregulated channels by customers of the basic tier only.

VI. EQUIPMENT AND INSTALLATION FEES

The Commission seeks comment on standards and application for setting the basis of actual cost-based rates for the installation and lease of equipment to receive the basic tier including, but not limited to, remote control units and additional television receivers.

The Board recommends that the actual cost methodology be applied to all equipment available to the customer on a monthly or leased basis and also to all additional services available on a leased basis without consideration of the intended tier use. The same actual cost methodology should be applied to installation fees.

The Board believes that equipment charges, installation charges and customer service requirements are properly regulated by franchising authorities. The setting of these charges should be based on actual costs for these products and services. The franchising authority should be permitted maximum flexibility to maintain existing rate and service protection mechanisms and statutes including mechanisms to protect specific groups such as senior citizens, income disadvantaged and physically challenged groups. Operator preferences benefiting these groups should be permitted and encouraged.

A suggested formula for use in the setting of equipment and installation fees is as follows: the rate, per customer per month, equals the actual cost of the equipment or installation plus a reasonable operator profit divided by the number of months of expected useful life of the equipment or installation. Useful life shall be determined by taking the lesser of three years, industry standard practice considering technological change or the useful life chosen by the cable operator in its applicable federal income tax filing. Customer payment for the equipment shall end with the last month of the time period specified above.

VII. EFFECTIVE COMPETITION

At paragraph 17 of the NPRM the Commission seeks comment on the circumstances in which it must find a cable system is not subject to effective competition before authorizing rate regulation by the franchising authority. The Commission